REMARKS

I. Status of Claims

Claims 1–31 and 33–36 are currently present in the application. Of those claims, claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 stand withdrawn from the application as being directed toward non-elected subject matter. Thus, claims 1–3, 6, 7, 9–11, 16–18, 21, 22, 24–26, 31, and 33–36 are currently pending on the merits. No amendments are made herein.

II. Claim Rejections Based on 35 U.S.C. § 103(a)

A. Rejections Under 35 U.S.C. § 103 Based on *Kron*

The Office rejects claims 1–3, 6, 10, 11, 16–18, 21, 26, 31, 33, and 36 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 3,790,016 to Kron (*Kron*). Office Action at 2, 4, 6. The Office admits that "*Kron* . . . does not disclose that the indicator pathway's second opening is in direct fluid communication with the baby's mouth," but asserts that "it would have been obvious to have modified *Kron*'s 'optional return flow' such that instead of being directed back into the bottle [it] is directed out through its own exit to the baby's mouth since it has been held that mere duplication of essential parts of a device involves only routine skill in the art, and as *Kron* appears to disclose that feeding the fluid back into the bottle is optional." Office Action at 3. Applicant traverses, and respectfully requests withdrawal of this rejection for the reasons below.

Questions of obviousness under 35 U.S.C. § 103(a) are resolved based on underlying factual determinations, such as: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; and (3) the level of

skill in the art. Graham v. John Deere Co., 383 U.S. 1, 17–18, 148 U.S.P.Q. (BNA) 459, 467 (1966); KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 404, 82 U.S.P.Q.2d (BNA) 1385, 1391 (2007) ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls."). Each prior art reference relied upon in a rejection must be considered "in its entirety, i.e., *as a whole*, including portions that would lead away from the claimed invention." *Graham*, 383 U.S. at 17 (emphasis added); *see also* M.P.E.P. § 2141.02(I).

In contrast to the Office's assertion, one of ordinary skill in the art would not have found it obvious to have modified *Kron* according to the Office's suggestion. In *Kron*, the fluid flowing into the return flow line 69 is driven by pump 74. Thus, the fluid is constantly being driven out of the return line. If that line were to be directed to the end of the nipple instead of back into the bottle—as suggested by the Office—milk would continuously flow out of the other end of the nipple, whether or not the baby's mouth was connected to the nipple or providing suction to the nipple, and whether or not the baby was ready to receive fluid in its mouth. One of ordinary skill in the art would have readily understood that such a modification would be highly undesirable, and would not have been a "mere duplication of essential parts." Accordingly, it would not have been obvious to modify *Kron*'s line 69 to be directed to the end of the nipple, as suggested.

Furthermore, even if one of ordinary skill in the art would have been motivated to have made the proposed modification, the subject matter of the pending claims would still not have been achieved. In particular, in the apparatus of *Kron*, the fluid flow through the indicator pathway (identified by the Office as comprising 73–75 and 65–68) is governed by a pump (74), thereby providing a constant volume stream through the

pathway. The principal of operation of *Kron*'s Figure 6 is that the fluid in the feeding pathway (24) is drawn directly across the fluid pumped through the indicator pathway, such that the fluid in the indicator pathway is deflected in part by the fluid flowing through the feeding pathway. Depending on the magnitude of deflection of the fluid in the indicator pathway caused by the fluid traveling through the feeding pathway, a sensor is able to measure the amount of fluid traveling through the feeding pathway to a baby. Col. 7, line 64 to col. 8, line 25.

However, the amount of fluid traveling through the indicator pathway never changes. The amount of fluid is constant and governed by pump 74, not the pressure of the suckling baby. Thus, the amount of fluid traveling through the indicator pathway of *Kron* is completely independent of the amount of fluid drawn into the feeding pathway. It is only the magnitude of the deflection of that liquid in *Kron* that is used to measure the feeding flow that changes. Therefore, even if one of ordinary skill in the art would have been motivated to have made the modification to *Kron* proposed by the Office, *Kron* would still fail to teach an apparatus measuring the cumulative volume consumed by a baby—"wherein the amount of fluid drawn into the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway"—as claimed in independent claims 1 and 16. Instead, the only way to measure the cumulative volume of fluid drawn into the feeding pathway in *Kron* is to use an intermediate flow meter (the need for which is overcome by the pending claims) or to look at the changing volume in a bottle (a technique that obviously cannot be employed when breast feeding).

Similarly, claim 31 recites, *inter alia*, "the suction drawing fluid from a fluid source into the first pathway and the second pathway, wherein the first and second pathways

are in direct fluid communication with the baby's mouth," a limitation that would not be met by modifying *Kron* as suggested by the Office. Again, the amount of fluid drawn through the indicator pathway in Figure 6 of *Kron* would still be controlled by pump 74, not by the suckling of a baby. As such, the Office has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a), and Applicant respectfully requests reconsideration and withdrawal of this rejection to claims 1–3, 6, 10, 11, 16–18, 21, 26, 31, 33, and 36.

B. Rejections Under 35 U.S.C. § 103 Based on *Kron* in view of *Sklar*

The Office also rejects dependent claims 7, 22, and 34 under 35 U.S.C. § 103(a) as unpatentable over *Kron* in view of U.S. Patent No. 5,264,599 to Sklar (*Sklar*). *Id.* at 8. Each of claims 7, 22, and 34 depend from one of independent claims 1, 16, or 31. Whatever *Sklar* may disclose about gradations, it fails to remedy the defects of *Kron* explained above. Accordingly, Applicant respectfully requests withdrawal of this rejection, and allowance of claims 7, 22, and 34.

C. Rejections Under 35 U.S.C. § 103 Based on *Kron* in view of *Rosenfeld*

The Office rejects dependent claims 9 and 24 under 35 U.S.C. § 103(a) as unpatentable over *Kron* in view of *Rosenfeld*. Office Action at 8. Each of claims 9 and 24 depend from one of independent claims 1 or 16. Whatever *Rosenfeld* may disclose about receiving milk from a mother's breast, it fails to remedy the defects of *Kron* explained above. Accordingly, Applicant respectfully requests withdrawal of this rejection, and allowance of claims 9 and 24.

D. Rejections Under 35 U.S.C. § 103 Based on *Kron* in view of *Bommarito*

The Office rejects dependent claim 35 under 35 U.S.C. §103(a) as allegedly unpatentable over *Kron* in view of *Bommarito*. Office Action at 9. Claim 35 depends from independent claim 31. Whatever *Bommarito* may disclose about a color code in the fluid pathway, it fails to remedy the defects of *Kron* explained above. Accordingly, Applicant respectfully requests withdrawal of this rejection, and allowance of claim 35.

III. Conclusion

For at least the above-outlined reasons, pending claims 1–3, 6, 7, 9–11, 16–18, 21, 22, 24–26, 31, and 33–36 should be allowable. In addition, each of withdrawn claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 ultimately depend from allowable independent claim 1 or 16. For at least that reason, claims 4, 5, 8, 12–15, 19, 20, 23, and 27–30 should also be allowable. Therefore, Applicant also respectfully requests rejoinder and allowance of all claims 1–31 and 33–36.

If the Examiner believes that a telephone conversation might advance prosecution of this application, the Examiner is cordially invited to call Applicant's undersigned representative at (404) 653-6553.

Applicant respectfully submits that the Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicant respectfully declines to automatically subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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